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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,944	06/26/2001	Shiro Iwasaki	M2047-9	1694
7278	7590	12/28/2005	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257				DUNN, MISHAWN N
ART UNIT		PAPER NUMBER		
		2616		

DATE MAILED: 12/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/891,944	IWASAKI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mishawn N. Dunn	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 June 2001.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 3,4 and 8 is/are allowed.
- 6) Claim(s) 1,2,5-7 and 9-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 June 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____.  | 6) <input type="checkbox"/> Other: _____.                                   |

### **DETAILED ACTION**

The previous action inadvertently omitted reference to claim 3. This action corrects that. The period for response is restated with the mailing of this action. The Office regrets any inconvenience to the Applicant.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5-7 and 9-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5-7 and 9-12 recite the limitation "at least one of a difference in stereo sounds, monaural sounds, multiplex sounds, number of channels, and an encoding bit rate." The examiner is unsure if the limitation refers to at least one of a difference in stereo sounds, monaural sounds, multiplex sounds, number of channels and an encoding bit rate (2 differences) or at least one of a difference in stereo sounds, monaural sounds, multiplex sounds, number of channels, or an encoding bit rate (1 difference).

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Katayama (US Pat. No. 5915066).

Consider claim 1. The examiner finds that the preamble carries no patentable weight because there are no recorder specifics in the claim. Katayama teaches a means for producing a digitally encoded audio stream (fig. 1); means for detecting a change in an audio mode (col. 13, lines 7-9); and means for reducing an audio output level beginning before said change, and lasting until after said change, to produce an output audio signal (col. 7, lines 56-67; col. 8 lines 1-9; fig 5).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Katayama (US Pat. No. 5915066) in view of Kawamura et al. (US Pat. No. 5621840).

Consider claim 2. Katayama teaches a means for producing a digitally encoded audio stream (fig. 1); means for detecting a change in an audio mode (col. 13, lines 7-9); and means for reducing an audio output level beginning before said change, and lasting until after said change, to produce an output audio signal (col. 7, lines 56-67; col. 8 lines 1-9; fig 5).

In the same field, Kawamura et al. teaches a digital video recording apparatus with a means for multiplexing a digitally encoded video signal to produce an output video signal and means for multiplexing said output audio signal and said output video signal to produce an output system stream (fig. 20).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use, within the reproduction device including a controlled fade-in of a second audio channel upon completion of the fading-out of a first audio channel of Katayama, a video recorder including video and audio encoders and a multiplexer to produce intra-coded video as taught by Kawamura et al., in order to provide a means for multiplexing digitally encoded video and audio signals to produce an output system stream.

***Allowable Subject Matter***

6. Claims 3, 4 and 8 are allowed.

Independent claim 3 identifies the uniquely distinct features, "audio encoding means to lower an audio output level before an audio encoding bit rate is changed, and restoring said audio output level after said audio encoding bit rate is changed."

Independent claim 4 identifies the uniquely distinct features, "video recording control means controls said audio encoding means to permit, when data, of said audio mode that has been judged by said audio mode judging means."

Independent claim 8 identifies the uniquely distinct features, "video recording control means controls said audio encoding means to permit, when an audio encoding condition changes, an audio output level to lower, and an audio encoding bit rate is then changed, and restoring said audio output level afterward."

The closest prior art, Katayama (US Pat. No. 5915066) and Kawamura et al. (US Pat. No. 5621840), fail to anticipate or render to the above underlined limitations obvious.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mishawn N. Dunn whose telephone number is 571-272-7635. The examiner can normally be reached on Monday - Friday 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Groody can be reached on 571-272-7950. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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*[Signature]*  
James J. Grody  
Supervisory Patent Examiner  
Art Unit 2616